INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
A. The Board's findings of fact	2
B. The Board's conclusions and order	6
C. The decision of the court of appeals	7
Summary of argument	8
Argument:	
I. The appeals to the store managers to cease dealing with Servette did not violate Section 8(b)(4)(i)(B) of the Act	11
A. The words of Section 8(b)(4)(i)(B) do not reach a mere request that a customer cease dealing with an employer that the union considers unfair	11
B. The legislative history of Section 8(b)(4)(i) shows that it was intended to reach only refusals to perform work for a secondary employer intended to force him to cease dealing with the primary employer	14
C. Section 8(b)(4)(ii) also shows that Section 8(b)(4)(i) was not intended to bar the inducement of the authorized managerial personnel of a neutral employer to exercise their delegated authority to cease dealing with a primary employer	20
II. The union's handbilling at the retail stores did not violate Section 8(b)(4)(ii)(B) of the Act	26
Conclusion	36
Appendix	37

706-439—63——1

CITATIONS

Cases:

	Page
A. H. Phillips, Inc. v. *Walling*, 324 U.S. 490	29
Alliance Auto Service, Inc. v. *Cohen*, 341 Pa. 283, 19 A 2d 152	33
Alpert v. *Excavating & Building Material Chauffeurs, Local 379*, 184 F. Supp. 558	25
Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Peyton Packing Company, Inc.), 131 NLRB 406	24
Arkansas Express, Inc., 92 NLRB 255	16
Auburn Draying Co. v. *Wardell*, 227 NLY. 1, 124 N.E. 9	33
Bossert v. *Dhuy*, 221 N.Y. 342, 117 N.E. 582	33
Carolina Lumber Co., 130 NLRB 1438	24
Conway's Express, 87 NLRB 972, affirmed, 195 F. 2d 906	16
Di Giorgio Fruit Corp., 87 NLRB 720, enforced, 191 F. 2d 642, certiorari denied, 342 U.S. 869	16
Duplex Printing Co. v. *Deering*, 254 U.S. 443	12
Excavating and Building Material Chauffeurs and Helpers Local Union No. 379 (Consalco Trucking, Inc.), 132 NLRB 827	25
Ferro-Co Corp., 102 NLRB 1660	16
Fortenbury v. *Superior Court*, 106 P. 2d 411	33
Goldfinger v. *Feintuch*, 276 N.Y. 231, 11 N.E. 2d 910	33
Great Northern Railway Co., 122 NLRB 1403, enforcement denied, 272 F. 2d 741	16
Great Western Broadcasting Corp. (KXTV), 134 NLRB 1617, reversed and remanded, 310 F. 2d 591	29
Great Western Broadcasting Corp. v. *National Labor Relations Board*, 310 F. 2d 591	28, 34, 35
International Brotherhood of Teamsters, etc., and Dairy Employees Local 537 (Lohman Sales Company), 132 NLRB 901	6, 25, 27
International Rice Milling Co., Inc., 84 NLRB 360, enforcement denied, 183 F. 2d 21, reversed, 341 U.S. 665	16
Joliet Contractors Ass'n v. *National Labor Relations Board*, 202 F. 2d 606, certiorari dened, 346 U.S. 824	17

Cases—Continued

	Page
Local 294, International Brotherhood of Teamsters, etc. (Van Transport Lines, Inc.), 131 NLRB 242	24
Local 324, International Union of Operating Engineers (Brewer's City Coal Dock), 131 NLRB 228	25
Local 1976, Carpenters v. *National Labor Relations Board*, 357 U.S. 93	15
Local Lodge No. 1424, Machinists v. *National Labor Relations Board*, 362 U.S. 411	34
Local No. 505, International Brotherhood of Teamsters, etc. (Carolina Lumber Co.), 130 NLRB 1438	6, 24
McComb v. *Blue Star Auto Stores*, 164 F. 2d 329	29
McComb v. *Wyandotte Furniture Co.*, 169 F. 2d 766	29
Middle South Broadcasting Co., 133 NLRB 1698	29
Mitchell v. *Pidcock*, 299 F. 2d 281	29
National Labor Relations Board v. *Business Machine & Office Appliance Mechanics Conference Board*, 228 F. 2d 553, certiorari denied, 351 U.S. 962	15
National Labor Relations Board v. *International Rice Milling Co.*, 341 U.S. 665	17
National Labor Relations Board v. *International Union of Brewery Workers*, 272 F. 2d 817	15
National Labor Relations Board v. *Local 294, Teamsters (Van Transport Lines)*, 298 F. 2d 105	25
Paper Makers Importing Co., Inc., 116 NLRB 267	16
Rabouin v. *National Labor Relations Board*, 195 F. 2d 906	15
Sealright Pacific, Ltd., 82 NLRB 271	15
Sheet Metal Workers International Association, Local Union No. 299 (S. M. Kisner and Sons), 131 NLRB 1196	25
Teamsters, Chauffeurs, Warehousemen & Helpers, Local 901 (Editorial "El Imparcial," Inc.), 134 NLRB 895	25
Upholsterers Frame & Bedding Workers Twin City Local No. 61 (Minneapolis House Furnishing Co.), 132 NLRB 40	25
United Plant Guard Workers (Houston Armored Car Co.), 136 NLRB 110	29
United States v. *Montgomery Ward & Co.*, 150 F. 2d 369	29

Cases—Continued

	Page
United Wholesale & Warehouse Employees, Local 261 v. *National Labor Relations Board*, 282 F. 2d 824	15
Walling v. *Friend*, 156 F. 2d 429	29
Walling v. *Mutual Wholesale Food Co.*, 141 F. 2d 331	29
Warehouse Employees Union, Local 730 (C. R. Shaeffer and Sons), 136 NLRB 968	25
W. T. Smith Lumber Co., 116 NLRB 1756, enforcement denied, 246 F. 2d 129	16

Statutes:

Fair Labor Standards Act, 52 Stat. 1060, as amended, 29 U.S.C. 203(j)	29
National Labor Relations Act, as amended in 1959 (61 Stat. 136, 73 Stat. 519, 29 U.S.C., 151 *et seq.*):	
Section 2	16, 37
Section 2(2)	16
Section 2(3)	16
Section 8(b)	27, 38
Section 8(b)(4)	26, 34
Section 8(b)(4)(i)	19, 20, 21, 24, 25, 26, 38
Section 8(b)(4)(ii)	20, 21, 23, 24, 26, 30
Section 8(b)(4)(ii)(B)	26, 38
National Labor Relations Act, as it existed prior to the 1959 Amendments (61 Stat. 136, 29 U.S.C. Sec. 151, *et seq.*):	
Section 8(b)(4)(A)	15, 16, 17, 19, 20, 22, 39
50 U.S.C. App. (1946 ed.) 1503	30

Miscellaneous:

105 Cong. Rec. 14347, II Leg. Hist. 1522–1523	18
105 Cong. Rec. 15532, II Leg. Hist. 1568	18
105 Cong. Rec. 16591, II Leg. Hist. 1708	30
105 Cong. Rec. 17333, II Leg. Hist. 1383	35
105 Cong. Rec. 17720, II Leg. Hist. 1388–1389	30
105 Cong. Rec. 17881–17882, 18022, 19771, II Leg. Hist. 1425–1426, 1712, 1857	19, 24
105 Cong. Rec. 17882–17883, II Leg. Hist. 1426–1427	33
105 Cong. Rec. 17898, 17899, II Leg. Hist. 1431, 1432	19
105 Cong. Rec. 18133, II Leg. Hist. 1720	31
105 Cong. Rec. 19849, II Leg. Hist. 1823	24, 32
Gregory, *Labor and the Law* (1961 ed.), pp. 132–153	33

Miscellaneous—Continued
Hearings before Subcommittee on Labor of the Committee on Labor and Public Welfare, U.S. Senate, 86th Cong., 1st Sess., S. 505, et al., pp. 265, 304–305 ..... Page 17, 22
H.R. 8400, Sec. 705(a), I Leg. Hist. 680 18
S. 748, I Leg. Hist. Labor-Management Reporting and Disclosure Act of 1959 (G.P.O., 1959), Sec. 503(a) 17
S. 1555, Sec. 707(a), I Leg. Hist. 582 17
S. Rep. No. 187 on S. 1555, 86th Cong., 1st Sess. 80, I Leg. Hist. 476 17
Teller, *Labor Disputes and Collective Bargaining* (1940), Vol. I, Sec. 123 33

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 111

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SERVETTE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (R. 85–98), is reported at 310 F. 2d 659. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 36–40, 18–29) are reported at 133 NLRB 1501.

JURISDICTION

The judgment of the court of appeals was entered on November 26, 1962 (R. 98–99). A motion for clarification of opinion, filed by the Board, was denied on January 22, 1963 (R. 105). On February 21, 1963, Mr. Justice Douglas extended the time for filing a petition for certiorari to and including April 25, 1963 (R. 106). The petition for a writ of certiorari was filed on April 25, 1963, and was granted on June

10, 1963 (R. 106; 374 U.S. 805).[1] The jurisdiction of this Court rests upon 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, 29 U.S.C. 160(e).

QUESTIONS PRESENTED

1. Whether Section 8(b)(4)(i) of the National Labor Relations Act prohibits a labor union from asking the managers of retail stores, who are authorized to select the sources of goods bought for resale, to cease to patronize a supplier which the union considers unfair.

2. Whether Section 8(b)(4)(ii) of the National Labor Relations Act prohibits a labor union from passing out handbills outside a retail store calling attention to the fact that the store carries products of a wholesaler which the union considers unfair, and asking the public not to purchase such products.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 37–39.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

Servette is a wholesale distributor of specialty merchandise such as candy, liquor, etc., in the Los Angeles area (R. 18; 4). Kory's Markets, Inc., McDaniels

[1] The case was set for oral argument immediately following *National Labor Relations Board* v. *Fruit & Vegetable Packers & Warehousemen, Local 760*, No. 88, this Term (R. 106).

Markets, and Daylight Markets (herein referred to respectively as Kory, McDaniels and Daylight) separately operate supermarket chains selling food in that area (R. 18–19; 71). Kory, McDaniels, and Daylight regularly purchase, handle, stock and sell products distributed by Servette (R. 18–19; 56, 59–60, 61–65, 67–71).

In early February 1960, as a result of a labor dispute with Servette, the Union struck and picketed Servette's warehouse in Los Angeles (R. 19; 74–75). From February 3 through March 10, 1960, in furtherance of its strike against Servette, the Union sought, by the means set forth below, to induce various stores operated by McDaniels, Daylight, and Kory to cease doing business with Servette.

1. MCDANIELS MARKETS

(a) Union agents told the manager of McDaniels Market No. 14 that they had a labor dispute with Servette and "asked [him] to cooperate with them by not dealing with Servette and by taking Servette merchandise off [the] shelves" (R. 19; 55–56). They told him that if he failed to cooperate they would pass out handbills to customers (R. 19–20; 55–57). Handbills were passed out but the manager continued his purchases from Servette (*ibid.*). The handbills passed out at this market, as well as at the other markets, read as follows (R. 20; 84, 54–55).

TO THE PATRONS OF THIS STORE

WHOLESALE DELIVERY DRIVERS & SALESMEN'S LOCAL NO. 848 urgently requests that you do not buy the following products distributed by SERVETTE, INC.:

* BRACH'S CANDY
* SERVETTE CANDY
* GOOD SEASON SALAD DRESSING
* OLD LONDON PRODUCTS

The SERVETTE COMPANY which distributes these products refuses to negotiate with the Union that represents its drivers. The Company is attempting to force the drivers to sign individual "Yellow Dog" contracts. These contracts will destroy the wages and working conditions that the drivers now enjoy, and will set them back 20 years in their struggle for decent wages and working conditions.

The drivers of SERVETTE appreciate your cooperation in this fight.

(b) Union agents asked the manager of McDaniels Market No. 18 to remove merchandise distributed by Servette from his shelves (R. 20; 63–64). At a meeting of McDaniels' managers, they were told by higher officials to use their best judgment in the matter and to do as they thought wise (R. 20; 63). The manager of McDaniels Market No. 18 either diminished his purchases from or ceased doing business with Servette (*ibid.*).

(c) The manager of McDaniels Market No. 25 was requested by the Union not to handle Servette merchandise and was shown a copy of the handbill, but

he was not told that the handbill would be distributed (R. 21; 63–64). He either diminished or terminated his business with Servette (*ibid.*).

2. DAYLIGHT MARKETS

Union agents asked the manager of Daylight Market No. 3 to cooperate with them in their dispute with Servette by not handling Servette products, and told him that they were passing out handbills to the customers of those markets which refused cooperation (R. 21; 57–58). No handbilling occurred (*ibid.*).

3. KORY'S MARKETS

(a) Union agents showed a copy of the handbill to the manager of Kory's Market No. 6 and told him that the handbills would be passed out to his customers unless Kory ceased doing business with Servette (R. 21; 69–71). When the manager said he would have to check with the main office, the Union agents passed out handbills to customers (*ibid.*). The next week the manager refused to let Servette stock his shelves (R. 21; 20). On two subsequent occasions Union agents visited the market to ascertain whether or not Servette merchandise was on display (R. 21; 61).

(b) Union agents passed out handbills at Kory's Market No. 5 (R. 21–22; 61–63). When the manager asked the men why they were handbilling, they thereupon ceased handbilling and departed without asking him to cease handling Servette products (R. 22; 61).

(c) Union agents asked the manager of Kory's Market No. 1 if he would cooperate by removing

Servette products from his shelves. Handbills were distributed on two different occasions (R. 22; 64–66).

(d) Union agents passed out handbills to the customers of Kory's Market No. 2 and told the manager that they would stop handbilling if he would cease handling Servette products (R. 22; 66–67).

(e) Handbills were distributed at Kory's Market No. 3 (R. 22; 69–70).[2]

B. THE BOARD'S CONCLUSIONS AND ORDER

Relying upon its decision in *Local Union No. 505, IBT (Carolina Lumber Co.)*, 130 NLRB 1438, the Board concluded that the Union's appeal to the various store managers did not violate Section 8(b)(4)(i)(B) of the Act (R. 37–38). In *Carolina Lumber*, the Board had held that Section 8(b)(4)(i) does not prohibit appeals directed to individuals high enough in the managerial hierarchy to control business relations with the primary employer, but only inducements directed to individuals, such as rank-and-file workers and low level supervisors, who merely have power, through work stoppages and related conduct, to put pressure on those higher in the enterprise.

The Board (with Member Rodgers dissenting) further concluded, on the authority of its holding in *International Brotherhood of Teamsters, Local 537*

[2] Jerry Finley, the Union's business agent, testified that in the course of its program against Servette the Union distributed the handbill described above to "well over 50" retail chain supermarkets in the greater Los Angeles area, and that the evidence here with respect to McDaniels, Daylight and Kory covered only 3 of the chains where customer handbilling occurred (R. 54–55, 76–78).

(*Lohman Sales Company*), 132 NLRB 901, that the Union's handbilling at the various stores doing business with Servette was protected by the "publicity" proviso and thus did not violate Section 8(b)(4)(ii)(B) of the Act (R. 38–40). In *Lohman*, the Board had held that the publicity proviso to Section 8(b)(4) was not limited to a situation where the union's primary dispute was with a manufacturer of products, but also applied where the primary employer was engaged in other forms of business such as distribution. The Board accordingly dismissed the complaint (R. 38).

C. THE DECISION OF THE COURT OF APPEALS

The court below held that Section 8(b)(4)(i) encompasses appeals directed to any supervisory personnel, and that the Union's inducement of the store managers violated that section (R. 85–97). The court held further that the Union's handbilling was not protected by the "publicity" proviso to Section 8(b)(4) because Servette was a distributor. The court followed its decision in *Great Western Broadcasting Corporation* v. *National Labor Relations Board*, 310 F. 2d 591, in which it held that the proviso applied only where the primary employer was a manufacturer of a physical product (R. 98). The court therefore set aside the Board's order and remanded the case for further proceedings consistent with its opinion (R. 98).

SUMMARY OF ARGUMENT

I

A. Section 8(b)(4)(i)(B) of the National Labor Relations Act, as amended in 1959, makes it an unfair labor practice for a labor organization to induce or encourage "any individual employed by any person" to engage in "a strike or a refusal in the course of his employment to use, * * * or otherwise handle * * * any goods * * * or to perform any services," with an object of "forcing" that person to cease doing business with any other person. It is apparent on its face that Section 8(b)(4)(i) deals only with a union's appeal to one or more individuals who work for Firm A to refuse to perform employment services in order to force Firm A to stop doing business with Firm B, with which the union is engaged in controversy. That provision leaves the union entirely free to ask Firm A—and, where Firm A is a corporation, the employees of that firm who are vested with authority to make the management decision—to break off business relations with Firm B so long as the labor dispute continues.

Section 8(b)(4)(i), therefore, does not apply in this case. The store managers, the highest managerial officials in each store, "were authorized to decide as they best could whether to continue doing business with Servette in the face of the threatened or actual handbilling" (R. 27). The Union's requests to the store managers contemplated, not that they would refuse to perform employment services in order to coerce their employer, but that they would make a business decision to terminate dealings with Servette.

B. The legislative evolution of Section 8(b)(4)(i) supports this conclusion. The old Section 8(b)(4)(A) was indisputably concerned only with union efforts to coerce the neutral employer's decision through inducing a withdrawal of employment services by his employees; it was not aimed at other means of achieving a boycott of the primary employer by the neutral employer. See *Local 1976, Carpenters* v. *National Labor Relations Board,* 357 U.S. 93, 98. The changes made in Section 8(b)(4)(A) by clause (i) of the 1959 amendments—substituting the phrase "individual employed by any person" for "employees of any employer," and striking out the word "concerted"—did not alter the central theme of the prohibition—*i.e.*, that it applies only to secondary pressure on a neutral employer in the form of inducements of employees to refuse to perform employment services.

C. Section 8(b)(4)(ii), added in 1959, also shows that Section 8(b)(4)(i) was not intended to bar requests to a neutral employer, or to his authorized managerial employees, to join in a boycott against the primary employer. Section 8(b)(4)(ii) forbids a union to "threaten, coerce, or restrain" any person for an object of forcing him to cease doing business with any other person. This provision would be almost entirely unnecessary if Section 8(b)(4)(i) forbade even the mere inducement of management personnel to cease dealing with some other person. Moreover, Section 8(b)(4)(ii) was plainly intended to leave the union free to request, beg, or persuade a firm (and thus its managerial personnel) to aid the union voluntarily by breaking off business relations

with an unfair employer. Section 8(b)(4)(i) cannot have been meant to forbid conduct that Section 8(b)(4)(ii) carefully left free.

II

The union's handbilling at the retail markets, urging members of the public not to purchase products which the markets had obtained from Servette, is privileged under the publicity proviso to Section 8(b)(4)(B). This proviso, added to Section 8(b)(4) in the Conference Committee, exempts from the reach of that section "publicity, other than picketing, for the purpose of truthfully advising the public * * * that a product or products are produced by an employer with whom the labor organization has a dispute and are distributed by another employer." The purpose of the proviso is to leave the union an avenue for the exercise of the right of free speech in advising the consuming public that certain products are sold by a company with whom the union has a dispute and in urging the public not to assist the primary employer by buying its products. The question here is whether the candy, salad dressing and "Old London Products" (mentioned in the handbills and obtained by the markets from Servette) were products "produced by" Servette. Contrary to the view of the court below, the operations of a wholesaler like Servette fall within the proviso.

The term "produced" is a familiar one in labor law. Prior to the enactment of the proviso the word "produced" had been applied, under the Fair Labor Standards Act and the War Labor Disputes Act, to the

operations of distributive organizations engaged in obtaining merchandise in large lots and distributing it to smaller outlets. These examples were presumably well known to the draftsmen of the 1959 amendments and there is no reason to believe that they intended to give the term "produced" any narrower meaning in the proviso to Section 8(b)(4). Moreover, construing "produced" in the proviso to encompass the operations of a distributor like Servette is in accord with the familiar common law "unity of interest" doctrine which holds that a labor union has a justifiable interest in following down to the retail level products which are handled at any stage of manufacture and distribution by an employer who fails to conform to what the union regards as fair employment standards. See *Goldfinger* v. *Feintuch*, 276 N.Y. 281, 11 N.E. 2d 910. A narrower construction of the proviso would severely limit the rights of unions to appeal to consumers to support the union in a dispute and would needlessly close the avenue of free speech that Congress so carefully kept open for publicity other than picketing.

ARGUMENT

I

THE APPEALS TO THE STORE MANAGERS TO CEASE DEALING WITH SERVETTE DID NOT VIOLATE SECTION 8(b)(4)(i)(B) OF THE ACT

A. THE WORDS OF SECTION 8(b)(4)(i)(B) DO NOT REACH A MERE REQUEST THAT A CUSTOMER CEASE DEALING WITH AN EMPLOYER THAT THE UNION CONSIDERS UNFAIR

Section 8(b)(4)(i) of the Act, as amended by the Labor-Management Reporting and Disclosure Act of

1959, 73 Stat. 519, 542, provides that it shall be an unfair labor practice for a union or its agents—

> (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; * * *

where "an object thereof is"—

> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * *.

It is apparent on its face that Section 8(b)(4)(i) deals only with a union's appeal to one or more individuals who work for Firm A to "engage in * * * a refusal" to perform employment services for the purpose of "forcing or requiring" Firm A to stop doing business with Firm B, with which the union is engaged in controversy. It is the putting of economic pressure upon Firm A, by cutting off employment services, that Section 8(b)(4)(i) seeks to prevent. The provision leaves the union entirely free to ask Firm A and all firms similarly situated to break off their business relations with Firm B so long as the labor dispute continues.[3] Thus, the prohibitions

[3] In the classical sense, this is not even a secondary, but only a primary, boycott. See Teller, *Labor Disputes and Collective Bargaining* (1940), Vol. I, Sec. 145; *Duplex Printing Co.* v. *Deering*, 254 U.S. 443, 446.

of Section 8(b)(4)(i) are inapplicable if the union merely requested the appropriate person to make that managerial decision. They apply only if the union asked an individual employed by Firm A to quit all or part of his work so as to coerce the firm's decision.

If Firm A is a small individual proprietorship, A is the one who decides whether to continue to deal with Firm B; and Section 8(b)(4)(i) is obviously inapplicable to a union's request that he boycott Firm B.* If Firm A is a corporation, the decision whether to join in the boycott against Firm B must be made by some individual (or group) employed by the corporation with managerial powers. The controlling principle, nonetheless, is the same. If the union merely asks the corporation to join in the boycott by addressing itself to the individual with the authority to make that decision, there is no violation. Section 8(b)(4)(i) is violated, if at all, only if the request is that the individual stop performing employment services so as to put pressure upon the managers of Firm A in reaching their decision.

In the present case it is entirely clear that the store managers were merely requested to exercise their authority to decide whether to continue, or cease,

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* Section 8(b)(4)(ii) comes into play, as discussed below, if the request is accompanied by a threat or coercion.

In some instances the Union sought to put pressure on the managers by threatening to appeal to the customers to withhold their patronage. We discuss below the question whether such appeals violate Section 8(b)(4)(ii). Any such pressure is obviously irrelevant to the present question under Section 8(b)(4)(i); the decision remained the managers', and it was a decision not to patronize, rather than not to work.

buying from Servette. The action they were asked to take—the decision they were asked to make—was identical to the request that would be made of an individual proprietor. They were asked *to decide,* not to exert the pressure of a refusal to work in order to coerce someone else's decision. Referring to the words of Section 8(b)(4)(i), the store manager was not asked "to engage in a strike" or to do anything "in the course of his employment" that can fairly be described as "a refusal * * * to use, manufacture, process, transport, or otherwise handle or work on any goods" or "to perform any services" with an object of "forcing or requiring" the manager's employer to cease dealing with Servette. The managers were asked only to exercise their managerial authority on behalf of their employers and in accordance with the discretion vested in them by their employers. They were not asked to apply economic pressure with an object of "forcing or requiring" their employers to decide to cease dealing with Servette.

B. THE LEGISLATIVE HISTORY OF SECTION 8(b)(4)(i) SHOWS THAT IT WAS INTENDED TO REACH ONLY REFUSALS TO PERFORM WORK FOR A SECONDARY EMPLOYER INTENDED TO FORCE HIM TO CEASE DEALING WITH THE PRIMARY EMPLOYER

Our analysis of Section 8(b)(4)(i) is confirmed by its legislative evolution. Prior to the 1959 amendments Section 8(b)(4)(A) declared it an unfair labor practice for a labor organization—

> to induce or encourage the employees of any employer to engage in, a strike or a concerted

> refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods * * * or to perform any services * * *

where an object was to force such employer to cease doing business with any other person. That provision was indisputably concerned only with inducement of the employees of Firm A to refuse to work in order to coerce Firm A's decision about doing business with Firm B. *Local 1976, Carpenters* v. *National Labor Relations Board*, 357 U.S. 93, 98. A mere request that the authorized personnel of a company exercise their authority to stop dealing with an employer with whom the union had a dispute was not prohibited by this section. It left the union free to persuade Firm A to boycott Firm B. It even left the union free to exert pressure on Firm A in ways other than inducing its employees to engage in a work stoppage (*e.g.*, threatening the officials of Firm A with a strike, or picketing its place of business with signs urging the public not to patronize it).[5]

The changes made in Section 8(b)(4)(A) by clause (i) of the 1959 amendments were not intended to alter this basic pattern.[6] Clause (i) substituted the

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[5] See *Sealright Pacific, Ltd.*, 82 NLRB 271, 272, n. 4; *Rabouin* v. *National Labor Relations Board*, 195 F. 2d 906, 911–912 (C.A. 2); *National Labor Relations Board* v. *Business Machine & Office Appliance Mechanics Conference Board*, 228 F. 2d 553, 559–561 (C.A. 2), certiorari denied, 351 U.S. 962; *National Labor Relations Board* v. *International Union of Brewery Workers*, 272 F. 2d 817, 819 (C.A. 10); *United Wholesale & Warehouse Employees, Local 261* v. *National Labor Relations Board*, 282 F. 2d 824 (C.A.D.C.).

[6] The effect of clause (ii) is discussed *infra*, pp. 20–26.

phrase "individual employed by any person" for "employees of any employer," and struck out the word "concerted." The purpose of the first change was to make the provision applicable to work stoppages by employees (in a colloquial sense) who were not technically "employees" within the statutory definitions.[1] The purpose of the second change was to make it clear that the inducement of a secondary work stoppage was interdicted even if the inducement was

[1] The definition of "employer" in Section 2(2) of the Act excludes the federal and state governments and their agencies or subdivisions, nonprofit hospitals, and those subject to the Railway Labor Act. The definition of "employee" in Section 2(3) excludes agricultural laborers, supervisors, and employees of an employer subject to the Railway Labor Act. Under Section 8(b)(4)(A), the Board had held that it was not unlawful for a union to induce the employees of a neutral employer to engage in a work stoppage if the neutral or his employees were excluded from the Act's coverage under Section 2. Thus, it was permissible for a union to induce work stoppages by minor supervisors, and farm, railway or public employees. See *Ferro-Co Corp.*, 102 NLRB 1660 (supervisors); *Arkansas Express, Inc.*, 92 NLRB 255 (supervisors); *Conway's Express*, 87 NLRB 972, 980, affirmed, 195 F. 2d 906, 911 (C.A. 2) (supervisors); *Great Northern Railway Co.*, 122 NLRB 1403, enforcement denied, 272 F. 2d 741 (C.A. 9), and supplemental Board decision, 126 NLRB 57 (railroad employees); *W. T. Smith Lumber Co.*, 116 NLRB 1756, enforcement denied, 246 F. 2d 129, 132 (C.A. 5) (railroad employees); *International Rice Milling Co., Inc.*, 84 NLRB 360, 361, enforcement denied, 183 F. 2d 21, 25–26 (C.A. 5), reversed on other grounds, 341 U.S. 665, 668 (railroad employees); *Paper Makers Importing Co., Inc.*, 116 NLRB 267, 275 (municipal employees). Compare *Di Giorgio Fruit Corp.*, 87 NLRB 720, 721, enforced 191 F. 2d 642, 646–647 (C.A.D.C.), certiorari denied, 342 U.S. 869 (agricultural labor organization).

directed to only one individual.[8] Neither of these changes altered the central theme of the prohibition—*i.e.*, that it applies only to refusals to perform employment services for a secondary employer for the purpose of "forcing" that secondary employer to cease dealing with the employer with whom the union has a dispute.

Thus, the changes made in Section 8(b)(4)(A) by clause (i) first appeared in the Administration bill, which was introduced by Senator Goldwater.[9] Testifying in its behalf, Secretary of Labor Mitchell stated that the change was designed to cure the situation whereby unions could "avoid the existing provisions by inducing individual employees, or workers not defined as employees by the act such as railroad and agricultural workers—to refuse to handle the products of the person with whom they want the employer to cease doing business."[10] However, the bill which was reported by the Senate Committee and which was first passed by the Senate (the Kennedy-Ervin bill) made no changes in the old Section 8(b)(4)(A).[11]

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[8] Some cases had held that the inducement was proscribed only if directed to two or more employees. See *Joliet Contractors Ass'n* v. *National Labor Relations Board*, 202 F. 2d 606, 612 (C.A. 7), certiorari denied, 346 U.S. 824; cf. *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U.S. 665, 671.

[9] See Sec. 503(a) of S. 748, I *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959* (G.P.O., 1959) 142.

[10] Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare, U.S. Senate, 86th Cong., 1st Sess., S. 505, *et seq.*, p. 265.

[11] S. 1555, I *Leg. Hist.* 582; see S. Rep. No. 187 on S. 1555, 86th Cong., 1st Sess. 80 (Minority Views), *I Leg. Hist.* 476.

The Landrum-Griffin bill, which was introduced in the House, contained a clause (i) similar to that of the Administration bill, making it unlawful "to induce or encourage any individual employed by any person" to engage in "a strike or a refusal in the course of his employment" to perform certain services.[12] An analysis submitted by the sponsors explained the purpose of this amendment as follows:[13]

> Present law provides that it is unlawful for a union to induce or encourage "employees of any employer" to engage in strike or "concerted refusal" to do their work for one of the forbidden objects listed in section 8(b)(4)— * * * Since farm laborers, railway labor, and supervisors are not "employees" within the meaning of the Act, unions may now without penalty induce them to engage in secondary boycotts. This bill corrects this by changing the word "employees" in the phrase quoted above to "any individual employed by any person." This change appears in clause 4(i).
>
> As the present act forbids inducing "employees" to engage in a strike or "concerted" refusal to do their work, the courts have held that unions may induce employees one at a time to engage in secondary boycotts. By changing "employees" to "any individual" and omitting the word "concerted", the proposed revision of

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[12] Sec. 705(a) of H.R. 8400, I *Leg. Hist.* 680.

[13] 105 Cong. Rec. 14347, II *Leg. Hist.* of the Labor-Management Relations and Disclosure Act of 1959 (G.P.O. 1959), 1522–1523. See also, 105 Cong. Rec. 15532 (Cong. Griffin), II *Leg. Hist.* 1568.

clause 4(i) closes this loophole. [Footnote omitted.]

The Landrum-Griffin bill passed the House with the clause (i) addition to Section 8(b)(4).

The Conference Committee accepted Section 8(b)(4)(i) of the House bill, after adding a proviso to make clear that the omission of the word "concerted" was not intended to bring legitimate primary activity within the Act's ban on secondary boycotts.[14] As Senator Kennedy explained to the Senate respecting the amendment to Section 8(b)(4): "The chief effect of the conference agreement * * * will be to plug loopholes in the secondary boycott provisions of the National Labor Relations Act. There has never been any dispute about plugging these artificial loopholes."[15]

In sum, the legislative history of Section 8(b)(4)(i) establishes that the changes made in the old Section 8(b)(4)(A)—including the substitution of "individual employed by any person" for "employees of any employer"—were not intended to alter the basic scheme of the prior section, which applied only to attempts to coerce a secondary employer to cease dealing with a primary employer by inducing employees

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[14] The proviso inserted at the end of Section 8(b)(4)(B), reads:

Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing * * *.

[15] 105 Cong. Rec. 17898, II *Leg. Hist.* 1431. See also, 105 Cong. Rec. 17881–17882 (Senator Morse), 18022 (Congressman Griffin), 19771 (Senator Goldwater); II *Leg. Hist.* 1425–1426, 1712, 1857.

of the secondary employer to refuse to perform employment services. Section 8(b)(4)(i), like the old Section 8(b)(4)(A), was therefore not intended to preclude a labor union from asking an employer—and thus the authorized managerial employees of a corporation—to join in a boycott against the primary employer.

C. SECTION 8(b)(4)(ii) ALSO SHOWS THAT SECTION 8(b)(4)(i) WAS NOT INTENDED TO BAR THE INDUCEMENT OF THE AUTHORIZED MANAGERIAL PERSONNEL OF A NEUTRAL EMPLOYER TO EXERCISE THEIR DELEGATED AUTHORITY TO CEASE DEALING WITH A PRIMARY EMPLOYER

We have so far discussed Section 8(b)(4)(i) in isolation from its relationship to Section 8(b)(4)(ii). The latter section forbids a union to "threaten, coerce, or restrain" any person where an object thereof is forcing him to cease doing business with any other person. It is our contention that Section 8(b)(4)(i) was intended to reach coercion of a neutral employer for the object of forcing him to cease dealing with a primary employer, by means of inducing work stoppages among individuals employed by the neutral; and that Section 8(b)(4)(ii) was intended to reach all other forms of coercion of a neutral employer for the same proscribed purpose. If Section 8(b)(4)(i) were not limited to prohibiting the inducement of work stoppages among the neutral's employees but were to be construed—as it was by the court below—to forbid inducing the authorized managerial personnel of a neutral employer to exercise their delegated authority to cease dealing with a primary employer, then (1) Section 8(b)(4)(ii) would be rendered almost entirely

unnecessary and (2) Section 8(b)(4)(i) would reach and forbid conduct that Section 8(b)(4)(ii) was plainly intended to leave free and permissible.

(1) Section 8(b)(4)(i) applies whether or not there is any coercion of the individual induced to refuse to perform employment services. If it were intended to prohibit appeals to authorized management personnel of a neutral employer to cease dealing with a primary employer, then every attempt to "threaten, coerce, or restrain" a corporation doing business with a primary employer would be prohibited by Section 8(b)(4)(i) without need for Section 8(b)(4)(ii); for every such attempt would necessarily involve inducing individuals employed by the corporation to cease dealing with the primary employer. The same would be true of partnerships or sole proprietorships unless the request that the firm cease dealing were directed solely to the owners and not to their managerial employees.

(2) More important, Section 8(b)(4)(ii) applies only if the union undertakes "to threaten, coerce, or restrain" any person. It does not apply to mere encouragement or persuasion of one person to cease dealing with another person and was plainly intended to leave such appeals for voluntary cooperation permissible so long as they are not accompanied by any form of coercion. But if Section 8(b)(4)(i)—which applies without any showing of coercion of the person induced or encouraged to refuse to perform employment services—forbids the union to encourage or persuade managerial personnel of a neutral to exercise their delegated authority to cease dealing with a

primary employer, then that Section forbids the very conduct that Section 8(b)(4)(ii) was plainly meant to leave free.

As we have shown (*supra*, pp. 14–15), the old Section 8(b)(4)(A) left the union free, not only to persuade Firm A to boycott Firm B, but also to coerce that result by threatening Firm A with a strike or by picketing its place of business with signs urging the public not to patronize it. By clause (ii), Congress intended to proscribe the last two means of achieving a boycott, but not the first. The words "threaten, coerce, or restrain" were chosen deliberately in order not to interfere with the union's freedom to obtain truly voluntary assistance from sympathetic employers as had often occurred in the past.

Thus, the following colloquy occurred between Secretary of Labor Mitchell and Senator Kennedy with respect to the provision of the Administrative bill analogous to Section 8(b)(4)(ii):[16]

> Senator KENNEDY. Mr. Secretary * * *
>
> I would like to ask you a question regarding section 503(a) of your bill: There is a manufacturer of clothing "A." He begins to purchase the products of a plant which is under the domination of racketeers * * *. Would it be a violation of section 503 of your bill if the business agent of the Clothing Workers Union at company A spoke to the plant manager and requested him not to order materials—nonunion materials—from the racketeer plant in Pennsylvania?

[16] Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, 86th Cong., 1st Sess., on S. 505, *et seq.*, pp. 304–305.

Secretary MITCHELL. We don't think it would be, Senator.

Senator KENNEDY. Now, supposing the plant in Pennsylvania was a nonunion plant, would it be a violation under your bill for union leaders in another company to go to his plant manager and ask him not to buy goods from the nonunion plant?

Secretary MITCHELL. Request him not to buy? No.

Senator KENNEDY. Now, if the representative of the union at plant A told the manufacturer that the members of the union would not continue to work on goods which were secured from the racketeer's shop?

Secretary MITCHELL. In that case, it is my interpretation of our proposal that that would be coercion. And our proposal prohibits coercion for the purpose of bringing pressure on an employer not to buy merchandise from a neutral third party.

Similarly the Conference Committee, in adopting clause (ii) of the Landrum-Griffin amendment to Section 8(b)(4), understood that the clause was intended to reach only threats, restraint, or coercion of the secondary employer and not a mere request to him for voluntary cooperation. Senator Dirksen, one of the conferees, stated that the new amendment "makes it an unfair labor practice for a union to try to coerce or threaten an employer directly (*but not to persuade or ask him*)" in order to "get him to stop

doing business with another firm or handling its goods (emphasis added)."[17]

In sum, it is apparent that, in enacting Section 8(b)(4)(ii), Congress intended to leave unions free to appeal, without coercion, to the authorized personnel of a neutral company to exercise their discretion to cease dealing with a primary employer. Obviously, Section 8(b)(4)(i) was not meant to forbid the very conduct which Section 8(b)(4)(ii) had carefully left permissible. Where such an appeal to management personnel was accompanied by threats or coercion, Section 8(b)(4)(ii) was intended to apply. Section 8(b)(4)(i) was reserved for one specific problem—the only one dealt with in the prior act—that of the inducement of refusals to work among the individuals working for a neutral employer in order to put pressure on that employer (and his authorized managerial personnel) to cease dealing with a primary employer.[18]

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[17] 105 Cong. Rec. 19849, II Leg. Hist. 1823. See also, 105 Cong. Rec. 17881-17882 (Senator Morse), II Leg. Hist. 1426.

[18] While the Board in *Local No. 505, International Brotherhood of Teamsters, etc. (Carolina Lumber Co.)*, 130 NLRB 1438, and subsequent cases has phrased the issue in terms of whether the individual induced is high enough in the managerial heirarchy to make a managerial decision (*i.e.*, Section 8(b)(4)(i) applies to the inducement of a low, but not a high, level supervisor), rather than in terms of what it is he has been requested to do (*i.e.*, to exercise his managerial discretion or to cease performing employment services for his employer), its decisions are consistent with the analysis set forth herein. In each instance where the inducement was found to be outside of Section 8(b)(4)(i) the individual induced not only had power to make a managerial decision but was requested to make such a decision, rather than to cease performing employment services for his employer. See *Local 294, International Brotherhood of Teamsters, etc. (Van Transport Lines, Inc.)*, 131 NLRB 242; *Amalgamated Meat Cutters and Butcher*

This construction of Section 8(b)(4)(i) has been approved by the Second Circuit in *National Labor Relations Board* v. *Local 294, Teamsters (Van Transport Lines)*, 298 F. 2d 105; and see *Alpert* v. *Excavating & Building Material Chauffeurs, Local 379*, 184 F. Supp. 358 (D. Mass.), Wyzanski, J.

Applying these principles to the instant case, the Board properly concluded that the Union's requests to the store managers to cease handling products distributed by Servette were not interdicted by Section 8(b)(4)(i). The store managers, being the highest managerial officials in the stores, "were authorized to decide as they best could whether to continue doing business with Servette in the face of threatened or actual handbilling" (R. 27). The Union's request to the store managers contemplated, not that they would refuse to perform employment services for their employer in order to coerce someone else's decision, but that they would make a business decision themselves. The Union's object was "to induce the various store managers to cease doing business with Servette by

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Workmen of North America, AFL–CIO (Peyton Packing Company, Inc.), 131 NLRB 406; *Sheet Metal Workers International Association, Local Union No. 299 (S. M. Kisner and Sons)*, 131 NLRB 1196; *Local 324, International Union of Operating Engineers (Brewer's City Coal Dock)*, 131 NLRB 228; *Upholsterers Frame & Bedding Workers Twin City Local No. 61 (Minneapolis House Furnishing Co.)*, 132 NLRB 40; *Excavating and Building Material Chauffeurs and Helpers Local Union No. 379 (Consalvo Trucking, Inc.)*, 132 NLRB 827; *International Brotherhood of Teamsters, etc., and Dairy Employees Local 537 (Lohman Sales Company)*, 132 NLRB 901; *Teamsters, Chauffeurs, Warehousemen & Helpers, Local 901 (Editorial "El Imparcial," Inc.)*, 134 NLRB 895; *Warehouse Employees Union, Local 730 (C. R. Sheaffer and Sons)*, 136 NLRB 968.

holding out the prospect that failure to do so would result in diminished trade" (R. 28). The court below thus erred in holding that the Union's requests to the store managers were barred by Section 8(b)(4)(i).

II

THE UNION'S HANDBILLING AT THE RETAIL STORES DID NOT VIOLATE SECTION 8(b)(4)(ii)(B) OF THE ACT

Section 8(b)(4)(ii)(B), as we have shown, makes it unlawful to "threaten, coerce, or restrain any person" where an object is to force him to cease doing business with any other person. However, the second proviso to Section 8(b)(4) states—

> Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution * * *.

The Board concluded that the Union's handbilling of the various stores, as well as the threats to handbill, did not violate Section 8(b)(4)(ii)(B) because the activity is protected by the above-quoted proviso to Section 8(b)(4).

The publicity proviso to Section 8(b) exempts from the reach of the section—

> "publicity, other than picketing, for the purpose of truthfully advising the public * * * that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer * * *."

Distributing handbills is certainly a form of publicity. There was no picketing. The handbills truthfully advised the public that the stores were distributing the products of Servette with whom the Union had a primary dispute.[19] The only question, therefore, is whether the candy, salad dressing, and "Old London Products" were "a product or products produced by" Servette. The court below held that these products were not "produced" by Servette because it is a distributor rather than a manufacturer of the products

[19] The handbills asked the consuming public not to buy the following products distributed by SERVETTE, INC.: Brach's Candy, Servette Candy, Good Season Salad Dressing, Old London Products (R. 84). All of the markets handled these products, and obtained one or more of them from Servette. However, since some of the markets purchased some of the products from distributors other than Servette, the Company contended before the Board and in the court below that the handbilling was untruthful and not protected by the proviso for this additional reason. The Board rejected this contention, finding no misrepresentation since all of the stores where the handbilling took place (or was threatened) did business with Servette, all purchased from Servette at least one and in most cases two of the items listed in the handbill, and all of the listed items were distributed by Servette (R. 28–29). As the Board pointed out in *International Brotherhood of Teamsters, etc., Local 537 (Lohman Sales Co.)*, 132 NLRB 901, 906, "the proviso does not require that a handbiller be an insurer that the content of the handbill is 100 percent correct, and that

(R. 98).[20] We submit that the term "produced" is not limited to manufacture, but also includes the work performed by Servette.

The term "produced" has no single commonly accepted meaning applicable to all contexts. A stage play is spoken of as "produced" and an automobile can be "produced." A product such as a bottled soft-drink may be considered "produced" when its formula is invented, when the ingredients of its formula are combined, when the necessary carbonated water is added to the formula, when it is bottled, or when all these steps plus the steps of distribution for sale by repackaging and transportation have taken place. Food products such as those handled by Servette may also be thought of as "produced" at the end of any of a number of stages up to and including the processes of storing, repackaging, and transporting the products for ultimate sale to a consumer. No single layman's meaning of "produced" is available to specify the precise meaning of the phrase in the proviso "produced by an employer with whom the labor organization has a dispute."

The term "produced" is, however, a familiar one in labor law. Even if we assume *arguendo* that it is intended as a word of limitation in the proviso, its well known meaning is amply broad enough to cover the activities of a wholesaler who buys and stores

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where, as here, there is no evidence of an intent to deceive and there has not been a substantial departure from fact, the requirements of the proviso are met." The court below did not disturb the Board's finding on truthfulness.

[20] The court followed its decision in *Great Western Broadcasting Corp.* v. *National Labor Relations Board*, 310 F. 2d 591.

goods, breaks lots, repackages, relabels or otherwise handles the goods.[21] Under the Fair Labor Standards Act, the term "produced" is defined as "produced, manufactured, mined, handled, or in any other manner worked on" (29 U.S.C. 203(j)), and it has been long and regularly applied to employees of distributive organizations such as Servette engaged in obtaining merchandise in large lots and distributing it to smaller outlets. See, *e.g.*, *Walling* v. *Mutual Wholesale Food Co.*, 141 F. 2d 331, 340 (C.A. 8); *Walling* v. *Friend*, 156 F. 2d 429 (C.A. 8); *McComb* v. *Blue Star Auto Stores*, 164 F. 2d 329 (C.A. 7); *McComb* v. *Wyandotte Furniture Co.*, 169 F. 2d 766 (C.A. 8); *Mitchell* v. *Pidcock*, 299 F. 2d 281 (C.A. 5); cf. *A. H. Phillips, Inc.* v. *Walling*, 324 U.S. 490. Similarly, although the War Labor Disputes Act did not include the express definition of "produced" found in the Fair Labor Standards Act, it was held in *United States* v. *Montgomery Ward & Co.*, 150 F. 2d 369 (C.A. 7), that the general retail department and mail order business of Montgomery Ward & Co. so involved the production of goods that these facilities could lawfully be

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[21] The Board has not confined the proviso to the situation presented in this case, where the union was following the goods themselves, but has extended it more broadly to publicity involving any economic relations between the establishment where the handbilling takes place and an employer with whom the union is in dispute. See *Middle South Broadcasting Co.*, 133 NLRB 1698; *Great Western Broadcasting Corp.* (*KXTV*), 134 NLRB 1617, reversed and remanded, 310 F. 2d 591 (C.A. 9); *United Plant Guard Workers* (*Houston Armored Car Co.*), 166 NLRB 110. Since physical products are involved here, it is unnecessary to determine the correctness of the Board's view that the proviso is not limited thereto.

seized under the statute authorizing the seizure of facilities equipped "for the manufacture, production, or mining of any * * * materials" (50 U.S.C. App. (1946 ed.) 1503).

Congress was presumably aware of this traditional meaning of the term "produced" in labor law and intended to incorporate the familiar usage in the proviso rather than some other but wholly unspecified meaning. Indeed, only this traditional meaning is fully consistent with the purposes of the proviso.

The primary purpose of the publicity proviso was to provide an avenue for the union's exercise of its rights of free speech. Senator Kennedy and Congressman Thompson had criticized Section 8(b)(4)(ii) of the Landrum-Griffin Bill, which did not contain the proviso, on the ground that [22]

> one of the apparent purposes of the amendment is to prevent unions from appealing to the general public as consumers for assistance in a labor dispute. This is a basic infringement upon freedom of expression. The portions of the House bill which have this effect are unacceptable.

Thereafter, the publicity proviso was added by the Conference Committee to guarantee the preservation of the union's rights of free speech. In a report to the Senate on the changes made by the Conference Committee, Senator Kennedy explained: [23]

> * * * The House bill prohibited the union from carrying on any kind of activity to disseminate informational material to secondary sites. They could not say that there was a strike at a primary plant.

[22] 105 Cong. Rec. 16591, II *Leg. Hist.* 1708.

[23] 105 Cong. Rec. 17720, II *Leg. Hist.* 1388–1389.

> We quite obviously are opposed to their affecting liberties in a secondary strike or affecting employees joining, but the House language prohibited not only secondary picketing, but even the handing out of handbills or even taking out an advertisement in a newspaper.
>
> Under the language of the conference, we agreed there would not be picketing at a secondary site. What was permitted was the giving out of handbills or information through the radio, and so forth.

The proviso added to preserve an avenue of free expression for the union was generally described by the congressional leaders on both sides as broadly authorizing appeals to consumers not to purchase unfair goods so long as the appeal was not by picketing and would not cause work stoppages. The scope of the privilege was apparently assumed to be at least as broad as the traditional right to follow the product sold by any unfair employer for resale to consumers who might be sympathetic to the union's cause, so that they could be informed of the union's grievances. Thus, for example, Congressman Thompson explained to the House:[24]

> * * * The right to publicize nonunion goods to consumers, without causing a secondary work stoppage, is recognized in the conference agreement. Employees will also be entitled to publicize, without picketing, the fact that a wholesaler or retailer sells goods of a company involved in a labor dispute. * * *

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[24] 105 Cong. Rec. 18133, II *Leg. Hist.* 1720.

And Senator Dirksen said of the bill: [25]

> * * * It bars a union from picketing a retail store to advertise that the store is handling the goods of a firm the union was striking, but permits other forms of such advertising—handbills, for example—if they do not cause the store's employees to stop working or prevent pickups and deliveries.

Although occasionally the proviso was loosely described as authorizing the union to follow the goods of a "manufacturer," the legislative history contains no mention—much less discussion—of any purpose to limit the scope of the proviso to following the goods of a manufacturer and not the goods of a prior distributor,[26] and no explanation of why such a limitation might have been imposed is apparent even in retrospect. Indeed any such limitation on the traditional uses of appeals to consumers would have amounted, in the case of the employees of a distributor, to closing every practicable avenue by which a union could inform the ultimate consumers of an employer's products of its dispute with the employer—a result Congress was assiduous to avoid whenever it became aware of the problem.

It thus appears that Congress intended the proviso to have, at least, the effect of allowing a labor union to exercise its traditional rights to follow down to the retail level products which are handled at any stage in the course of manufacture and distribution by an

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[25] 105 Cong. Rec. 19849, II *Leg. Hist.* 1823.

[26] This is in marked contrast to the debate surrounding every obvious and apparent limitation of the scope of the proviso.

employer who fails to conform to what the union regards as fair employment standards. Thus construed, the proviso would permit a labor union to follow an "unfair" product but not to spread the labor dispute more widely through the community by putting pressure upon any firm that had any form of business relations with a firm engaged in a labor dispute. This distinction was well known in labor law and was before the Congress which passed the 1959 amendments.[27] Compare *Bossert* v. *Dhuy*, 221 N.Y. 342, 117 N.E. 582, and *Goldfinger* v. *Feintuch*, 276 N.Y. 231, 11 N.E. 2d 910, with *Auburn Draying Co.* v. *Wardell*, 227 N.Y. 1, 124 N.E. 97. See also Teller, *Labor Disputes and Collective Bargaining* (1940), Vol. I, Sec. 123; Gregory, *Labor and the Law* (1961 ed.), pp. 132–153.[28]

In sum, if the term "produced" is given its familiar meaning in the area of labor law, the effect of the proviso is to allow unions that freedom to inform the public of unfair products which has been accepted under prior notions of "following the product" and

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[27] See the remarks of Senator Morse, 105 Cong. Rec. 17882–17883, II *Leg. Hist.* 1426–1427.

[28] The cases applying the "following the product" or "unity of interest" principle have not limited it to situations where the primary employer was the manufacturer of the "unfair product." See *Alliance Auto Service, Inc.* v. *Cohen*, 341 Pa. 283, 19 A. 2d 152 (union had primary dispute with a distributor of petroleum products and auto accessories, and in furtherance thereof picketed retail stations selling products obtained from that distributor; picketing held to be permissible); *Fortenbury* v. *Superior Court*, 106 P. 2d 411 (union had primary dispute with a poultry farm and in furtherance thereof picketed poultry market selling its products; picketing held to be permissible).

which alone would fulfill the purpose of the proviso to preserve some effective means of enlisting the aid of the consuming public in a dispute with an employer whose products are sold to the public. There was therefore no reason for the court below to narrow the effect of the proviso because of Congress' choice of the term "produced." The court attributed a false significance, we think, to the use of the words "producer, processor or manufacturer" in earlier parts of Section 8(b)(4). See *Great Western Broadcasting Corp.* v. *National Labor Relations Board*, 310 F. 2d at 595–597. This Court has cautioned that "insights derived from syntactical analysis form a hazardous basis for the explication of major legislative enactments." *Local Lodge No. 1424, Machinists* v. *National Labor Relations Board*, 362 U.S. 411, 417, n. 7. In any event, it is evident that this prolifieration of nouns was merely used to be sure to cover all forms of activity. It was not intended to equate the activities described by each noun. The fact that the draftsmen of the proviso used only the broadest word "produced" does not show that they intended it to cover only manufacturing and processing. Indeed, if that had been the purpose, the 1959 draftsmen with the earlier words before them would undoubtedly have used the word "manufac-

tured" or "processed" instead of the broader term "produced".

Similarly, we submit that no significance can be drawn from the fact (see *Great Western, supra,* at 600) that another version of the proviso, contained in a request by the Senate conferees for instructions from the Senate, read (105 Cong. Rec. 17333, II Leg. Hist. 1383):

> Provided, That nothing contained in this subsection (b) shall be construed * * * to prohibit publicity for the purpose of truthfully advising the public (including consumers) that an establishment is operated, or goods are produced or distributed, by an employer engaged in a labor dispute * * *.

There was no vote on the request because the Chairman of the Senate Conferees, Senator Kennedy, shortly thereafter reported that the conferees had accepted the proposals of the Senate's representatives. All the other evidence in the legislative history indicates that the intent of the proviso was to authorize all forms of appeals to the public not to purchase "unfair goods" provided that the publicity was not accompanied by picketing (*supra,* pp. 30–32).

CONCLUSION

For the foregoing reasons, the judgment of the court below should be reversed and the case should be remanded with directions to sustain the Board's order dismissing the complaint.

Respectfully submitted,

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APPENDIX

The relevant provisions of the National Labor Relations Act, as amended in 1959 (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are as follows:

Sec. 2. When used in this Act—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status

of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

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SEC. 8. * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is: * * * (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

* * * * *

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer

are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: *Provided further,* That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

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The relevant provisions of the National Labor Relations Act, as it existed prior to the 1959 Amendments (61 Stat. 136, 29 U.S.C. Sec. 151, *et seq.*), are as follows:

* * * * *

SEC. 8.

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where the object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or em-

ployer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

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